



Republika e Kosovës
Republika Kosova-Republic of Kosovo

Qeveria-Vlada-Government

Ministria e Ekonomisë dhe Financave - Ministarstvo Privrede i Finansija -
Ministry of Economy and Finance

Administrata Tatimore e Kosoves - Poreska Administracija Kosova - Tax
Administration of Kosovo

ON ADMINISTRATIVE INSTRUCTION NO. 09 / 2010
ON APPLICATION OF LAW NO. 03/L-161, ON PERSONAL INCOME TAX

Ministry of Economy and Finance

Based on Article 50 of Law No. 03/L-161, “*On Personal Income Tax*,” the Minister of the Ministry of Economy and Finance,

hereby issues:

ADMINISTRATIVE INSTRUCTION
ON APPLICATION OF LAW NO. 03/L-161, ON PERSONAL INCOME TAX

Section 1
Goal and Scope

The goal of this Administrative Instruction is the establishment of procedures and requirements for application of provisions of Law No. 03/L-161, “*On Personal Income Tax*,” (hereafter referred to as The Law).

Section 2
Definitions

1. Paragraph 1.5 of Article 2 of The Law defines an “**Employee**” as a natural person, who performs work for wages under the direction and control of an employer”. A natural person who is not called an employee, but something else, such as ‘director’,

‘official’, ‘parliamentarian’, ‘minister’, ‘clerk’ etc., shall be deemed to be an employee if at least two of the following four conditions are met:

- 1.1 an employee is not at risk for receiving payment,
- 1.2 an employee does not need to invest in working instruments, tools and equipment,
- 1.3 an employee does not determine the place and time of work, and
- 1.4 an employee does not work for more than one employer.

2. Paragraph 1.8 of Article 2 of The Law defines “**Principal Employer**” as “*the employer designated by the employee as such at a time and in the manner set out in a sub-legal act issued by the Minister*”.

2.1 Each employee, whether working for one or more employers, shall designate a principal employer. Employees, who have previously designated their principal employer and who do not want to change their principal employer, are not required to undertake any additional designation action.

2.2 Employees who start employment shall designate a principal employer within 15 days from the commencement date of employment by filling out and submitting a principal employer designation form (in the format prescribed by the Tax Administration of Kosovo) to the Tax Administration of Kosovo. An employee who changes principal employer shall designate a new principal employer within 15 days from the change by filling out and submitting a new principal employer designation form to the Tax Administration of Kosovo.

3. Paragraph 1.20 of Article 2 of The Law defines “resident” as “a natural person who has a principal residence in Kosovo, or is physically present in Kosovo for 183 days or more in any twelve-month period of time; or an entity, personal business enterprise, partnership, or association of persons which is established in Kosovo or has its place of effective management in Kosovo”.

3.1 In respect of individuals:

3.1.1 The 183 days requirement means the total number of days of being physically present in Kosovo, with or without breaks. If part of a day is spent in Kosovo it shall be counted as a full day spent in Kosovo.

3.1.2 The term "**Principal Residence**" of an individual means the place where the individual's family lives, where the individual's primary life interests are linked and the like. Also in defining the principal residence the amount of time spent and the nature of time spent are to be taken into account.

3.2 In respect of entities:

3.2.1 The requirement of being ‘**Established**’ in Kosovo means that the entity whether being a business organization or a not-for-profit organization or a governmental body etc., is established under the Kosovo law and registered by respective competent authorities in Kosovo.

3.2.2 The term **'Place of Effective Management'** means the place where the majority of the executive directors convene and direct the work on day to day operations. It does not necessarily mean the headquarters of the entity.

Section 3 Gross Income

1. Paragraph 1 of Article 7 of The Law provides that gross income means all income actually and constructively received from a range of sources. In respect of the following sources, the expression "*actually and constructively received*" shall have the following meaning:

1.1 *Wages*. Usually wages are paid once, twice or even more in a month although the employment services are rendered on a daily basis. Income from wages shall be included in the gross income of the tax period in which the wage is paid by the employer and received by the employee and the wage expense shall be claimed as a deduction by the employer in the same tax period. The same principle applies to the liability for withholding tax on wages – this liability arises only when the wages are actually paid, not when the wage liability is accrued in the books of the taxpayer. Any component of "wages" that is not paid in cash shall also be included in the gross income of the tax period in which that component is received.

Example:

An employer employs a person during the months of April to June 2010. The employer pays the employee's April wages to the employee in May 2010 and the withholding tax on those wages he pays in June 2010 (before the 15 June due date). Due to cash-flow difficulties he delays paying the employee's remaining wages. The May wages are not paid until October 2010 and the withholding tax on those wages is paid in November 2010 (before 15 November). The June wages are not paid until January 2011 but the withholding tax on those wages is not paid until 15 March 2011. The tax consequences are:

1. the employee includes the April and May wages in their 2010 gross income but the June wages are included in their 2011 gross income, when those wages were actually received;
2. the employer gets a tax deduction for the April and May wages and for the withholding tax paid on them in 2010, but the deduction for June wages and withholding tax thereon is not allowed until the 2011 tax year, being when those wages and the tax was paid;
3. the employer is only required to complete monthly wage withholding tax forms in respect of the months when the employee was paid (May 2010, October 2010 and January 2011);

4. no interest or penalties apply in respect of the withholding tax on the April and May wages (even though the May wages were not paid until October and tax not paid until November, the tax liability relates to when the wages were actually paid);

5. interest and late filing / payment penalties will apply in respect of the June wages – as such wages were paid in January 2011, the withholding tax was payable on those wages by 15 February 2011 but was not paid until 15 March 2011. Interest and penalties will however only apply in respect of the period from 15 February to 15 March 2011 (they do not date back to June 2010 when the wages were earned, July 2010 when the employee would normally have been paid or August 2010 when the withholding tax on those wages would normally have been paid).

1.2 *Rents*. Rental income from the lease of immovable or movable property shall generally be reported in the tax period that rental income is received irrespective of the period to which the rental payment relates. However, in accordance with paragraph 2 of Article 11 of The Law, taxpayers who are in the business of leasing immovable or movable property shall account for their lease income on the basis that such income is derived from an economic activity.

Example 1:

Taxpayer A has two residential properties, one of which he lives in and the other which he rents. He/she charges a tenant two years rent in advance. Even though the rental covers more than one year, Taxpayer A is required to include it all in his/her gross income in the tax period in respect of which the rent was received. In terms of deduction of rental expenses, if Taxpayer A chose not to keep records under Article 27 of The Law, he/she could deduct 10% of the total rent received, but if he/she kept records for the purposes of claiming true expenses they would only be able to deduct rental expenses relating to each tax period as they arose.

Example 2:

Taxpayer B has numerous properties and spends his/her work time maintaining these properties. Taxpayer B is running an economic activity of renting and will be required to account for tax on his/her rental income in accordance with Article 32 of The Law – for example, where the taxpayer receives annual rental income of more than 50,000 euro, that taxpayer is required to account for their rental income on an accrual basis.

Note: In both Examples 1 and 2, unlike the tax treatment of wages, the timing of when the landlord receives rental income and includes it in his/her gross income, has no

influence on when the person paying the rent can claim a tax deductible expense for the rent paid. Thus with rents paid in advance, there may be situations where the landlord has to include rental income in their tax declarations at the beginning of the rental period, but the tenant cannot claim the rental expenses until the periods to which they relate.

1.3 *Interest.* Income from interest is to be reported in the tax period such interest is paid or credited to the account of the receiver.

Example:

A person invests funds in a bank term deposit for a six month period. Interest is added to the balance on term deposit every month. At the end of the six month period, the person decides to keep the funds on term deposit for a further six months. Interest credited to the account balance each month will be included in gross income in the month in which it is credited. The tax treatment remains the same whether or not the interest is withdrawn or not each month, and whether or not the funds from the term deposit are withdrawn and reinvested after the end of the first six months or whether the term deposit is simply “rolled over”. Although technically interest could be said to accrue on a daily basis, it will only be included in gross income when an amount is actually paid or credited.

1.4 *Lottery and gambling winnings.* Income from such winnings shall be reported in the tax period in which it is received or credited to the account of the winner.

Example:

A person regularly gambles at a gambling institution. The institution opens an “account” for the person which holds a running balance of gambling winnings and withdrawals. Winnings shall be included in gross income when they have been credited to the account, whether or not the person actually withdraws the funds from that account or not.

Section 4 Exempt Income

1. Paragraphs 1.1 to 1.5 of Article 8 of The Law provide exemptions from Personal Income Tax to wages paid or credited to foreign personnel, foreign representatives, foreign officials, etc. The term *‘foreign’* is used to define an individual who is not an habitual resident of Kosovo and who is not recorded in the register of citizens required to be kept under Law No. 03/L-034 “On Citizenship of Kosova”.

2. Paragraph 1.4 of Article 8 of The Law provides that exemption from personal income tax shall apply to, amongst others, wages received by foreign and locally recruited officials of “*entitled and duly authorized international inter-governmental financial institutions operating in Kosovo*”. This tax exemption applies only in respect of officials of international inter-governmental financial institutions that have an

official agreement with the Government of Kosovo which recognizes such tax exemptions.

3. For the purposes of paragraphs 1.10 and 1.11 of Article 8 of The Law, the expression “*other than a local person*” means contractors established outside Kosovo who are not required to register with the Ministry of Trade and Industry in Kosovo but who are required to notify TAK in writing that they are working in Kosovo.

3.1 If a non-local contractor performs other activities in Kosovo, other than those in relation with the organizations mentioned in those paragraphs, it should register in Kosovo with the Ministry of Trade and Industry and with TAK (in the latter case either by applying for a fiscal number or by appointing a fiscal representative who will be liable for all Kosovo taxes of the contractor) and income generated from these other activities is inclusive in the gross income of the taxpayer.

3.2 Such non-local contractors, whether they have other activities or not, are also responsible (whether directly or through their fiscal representative) for meeting any applicable withholding tax obligations provided under Chapter IX of The Law.

4. For the purposes of paragraph 1.11 of Article 8 of The Law, the expression “*International Inter-governmental Organizations*” shall mean:

4.1 International Finance Corporation (IFC) and other members of the World Bank Group;

4.2 Inter-American Development Bank (IADB);

4.3 Asian Development Bank (ADB);

4.4 African Development Bank (AfDB);

4.5 Islamic Development Bank (IDB).

5. Paragraph 1.18 of Article 8 of The Law provides that certain training expenses paid by an employer for an employee to attend formal training programs shall be exempt from personal income tax so long as such expenses do not exceed one thousand euros (€1,000) in a tax period. The expenses to which this paragraph relates are the actual costs of the training program itself excluding those costs incurred in order to travel to the training course and excluding those costs incurred for subsistence at the training course (which are covered by paragraph 1.20 of Article 8 of The Law).

6. Paragraph 1.20 of Article 8 of The Law provides that “*expenses for subsistence while attending a formal training program shall be allowable up to a maximum established by the Minister in a sub-legal act*”. For the purposes of that paragraph, the maximum amounts of subsistence expenses available for exemption from personal income tax shall be:

6.1 In the case of lodging necessary due to the distance of the training program venue from a person's main residence or due to the requirements of training program attendance:

6.1.1 lodging within Kosovo, 50 euro per day,

6.1.2 lodging outside Kosovo, the daily amount of lodging expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the lodging is provided;

6.2. In the case of meals:

6.2.1 training programs inside Kosovo, 15 euro per day for day training programs or 25 euro per day for training programs that require staying overnight.

6.2.2 training programs outside Kosovo, the daily amount of meal expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the meals are provided;

6.3 Where subsistence expenses in any tax period exceed these amounts, the excess shall be considered taxable income of the employee and subject to withholding in accordance with the provisions of The Law.

7. Paragraph 1.21 of Article 8 of The Law requires that the kinds of training expenses that qualify for exemption from personal income tax under Article 8 shall be specified in a sub-legal act. That paragraph relates to training expenses that qualify for exemption under paragraph 1.18 of Article 8 of The Law which provides that exemption applies to *“training expenses paid by an employer for an employee to attend formal training programs to acquire basic skills necessary for the employee to perform assigned tasks or necessary to provide updated skills to the employee which are job-related”*. Training expenses paid by an employer to attend training programs to attain or update skills that are not needed in the employee's work (e.g. training in a foreign language that is not used in the workplace) will not qualify for exemption. Paragraph 1.21 of Article 8 of The Law further provides that training expenses that qualify for exemption shall also not include amounts equivalent to wages and salaries which are paid to beginners or apprentices.

Section 5 Income from Wages

1. Paragraph 1.8 of Article 9 of The Law provides that gross income from wages shall include *“benefits in things given by an employer to an employee that exceed the minimum amount determined in a sub-legal act issued by the Minister”*. For the purposes of that paragraph, the minimum amount of benefits in things above which such benefits will be regarded as gross income from wages shall be sixty-five (65) euro per month. For example, if an employee receives from an employer in-kind

benefits of 90 euro/month, the amount of 25 euro, which exceeds the de minimus amount of 65 euro, shall be included in gross income from wages.

2. Paragraph 2.1 of Article 9 of The Law provides that gross income from wages shall not include “*reimbursement of actual business travel expenses up to the amounts to be specified in a sub-legal act issued by the Minister*”. For the purposes of this paragraph, business travel expenses includes transportation, lodging and meals for business trips but does not include allowances for commuting to and from the place of work. The following conditions must be met to qualify for business travel expenses:

2.1 the business trip must have been authorized in writing by the proper management level;

2.2 the purpose of the business trip must be clearly stated;

2.3 A travel claim must be submitted to the employer in accordance with the employer's travel allowance policy;

2.4 the amount reimbursed for lodging must be within a limit set in the employer's travel allowance policy document. For tax purposes it should not be higher than 50 euro for lodging within Kosovo and for lodging outside Kosovo, it should not be higher than the daily amount of lodging expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the lodging is provided;

2.5 the amount reimbursed for transportation within Kosovo must be the actual cost of public transportation or a reasonable amount per kilometer stated in the employer's travel allowance policy document if the employee uses his/her own vehicle. For tax purposes it should not be higher than 16 cent/kilometer. For trips outside Kosovo no limitation applies provided that the transport bill/ticket is available for inspection by the Tax Administration of Kosovo;

2.6 the amount reimbursed for meals must be a specified amount per breakfast, lunch or dinner stated in the employer's travel allowance policy document. For tax purposes for trips inside Kosovo it should not be higher than 15 euro per day trip or 25 euro for trips that require staying overnight and for trips outside Kosovo, it should not be higher than the daily amount of meal expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the meals are provided;

2.7 the business travel expenses must be fully recorded in the employer's books of account;

2.8 when reimbursements exceed the monetary limits specified above, the excess shall be considered taxable income of the employee and subject to withholding in accordance with the provisions of The Law.

3. For the purposes of paragraphs 2.5 and 2.6 of Article 9 of The Law, the following reporting requirements must be met:

3.1 the home/work travel must have been authorized in writing by the proper management level;

3.2 a travel claim must be submitted to the employer in accordance with the employer's travel allowance policy;

3.3 the transport bill/ticket must be available for inspection by the Tax Administration of Kosovo;

3.4 the travel expenses must be fully recorded in the employer's books of account.

Section 6 Deduction of Expenses

Paragraph 3 of Article 15 of The Law provides that no deduction will be allowed for any accrued expenses related to income which is subject to withholding tax unless such expense is paid on or before 31 March of the following year:

Example:

A personal business enterprise that has a turnover of more than 50,000 euro (and thus accounts for income tax on a “real” basis) rents its business premises. At the end of 2010, it owes the landlord 3,000 euro for 3 months rent to 31 December 2010. If the landlord is not in the business of renting, then the landlord can only record rental income when it is received, and the rent payer can only claim the rental expense when the rent is paid – in this case, Article 15 has no application as it only applies in respect of accrued expenses. If however the landlord is in the business of renting and can claim rental income on an accrued basis, then the rent payer can also claim rental expenses on an accrual basis. Provided the accrued rent is paid on or before 31 March 2011, the rental expense deduction claimed in the 2010 tax period in respect of the last 3 months will be allowed. However, if that rent is not paid by 31 March 2011, then the personal business enterprise will not be able to claim the accrued rent in the 2010 tax period. Such rent will only be able to be claimed as an expense in the tax period (2011 or later) when the owed rent is actually paid.

Section 7 Deduction of Business Travel Expenses

Paragraph 2 of Article 18 of The Law refers to limits on the deduction available for business travel expenses. The limits to be applied are the same as those outlined in paragraph 2 of Section 5 of this Administrative Instruction.

Section 8

Withholding Tax on Wages

1. Paragraph 2 of Article 38 of The Law requires that employers who are an employee's principal employer shall withhold amounts of tax for payroll periods in accordance with the rates established in Article 6 of The Law.

1.1 In applying this provision to persons who expect to have a principal employer throughout the tax year, the amount payable for each pay period needs to be grossed up to an annual basis, based on the number of pay periods in the tax year, before applying the annual amounts shown in Article 6 of The Law (after allowing for pension contribution deductions for Kosovo residents).

1.2 The annual tax payable so calculated is then divided by that same number of pay periods to give the amount that should be withheld for the pay period. Persons who do not expect to have a principal employer throughout the tax year (e.g. persons entering the workforce after completing full-time education, persons being dismissed from employment and not finding a replacement position, persons expecting to retire or otherwise cease all employment during the year, etc) may, after 1 January 2011, complete a Special Tax Rate Application form (in a format prescribed by TAK) and apply to TAK for a special tax rate to be applied by their principal employer to as far as possible more accurately match withholding tax deductions with the amount of tax that will be payable by the employee on an annual basis.

Example 1:

A principal employer pays an employee 500 euro per month. As there are 12 pay periods during the year, the employee's annual wage would be 6,000 euro (500 x 12). After allowing a deduction of 5% from the gross for employee pension contributions, the annual taxable wage will be 5,700 euro. Paragraph 1.4 of Article 6 then applies and this provides that annual tax payable on that amount shall be 273 euro 60 cents plus 10 percent of the amount over 5,400 euro ($5,700 - 5,400 = 300 \times 10\% = 30$ euro) giving a total of 303 euro 60 cents. This amount is then divided by the number of pay periods (12) to result in 25 euro 30 cents being required to be withheld from the 500 euro gross amount payable. Together with the pension contributions of 25 euro (5% of 500 euro), the employee will receive a net wage of 449 euro 70 cents (500 euro less 25 euro pension contributions withheld and less 25 euro 30 cents withholding tax on wages).

Example 2:

Same facts as in Example 1 except that it is now the following month and the employer has decided to pay the employer a higher wage of 550 euro for that month. In this case, the annual amount is calculated as 6,600 euro (the fact that the employee received a gross wage of only 500 euro in the previous month is irrelevant) which after 5% employee pension contributions indicates an annual taxable wage of 6,270 euro. Paragraph 1.4 of Article 6 then applies and this provides that annual tax payable would be 273 euro 60 cents plus 10 percent of the amount over 5,400 euro ($6,270 - 5,400 \times 10\% = 87$ euro) giving a total of 360 euro 60 cents. Dividing by the number of pay periods (12) results in 30 euro 5 cents being required to be withheld from the 550 euro gross amount payable. Together with the pension contributions of 27 euro 50 cents (5% of 550 euro), the employee will receive a net wage of 492 euro 45 cents (550 euro less 27 euro 50 cents pension contributions withheld and less 30 euro 5 cents withholding tax on wages).

In the third month, if the employer continues to pay the employee 550 euro gross wages, then the employee will continue to receive 492 euro 45 cents net as per Example 2. If however, the employer only pays 500 euro gross wage in the third month, then the employee will receive 449 euro 70 cents net as per Example 1. No adjustment is made for what the employee was actually paid in the first two months.

Example 3:

A principal employer pays an employee 200 euros per fortnight. (The main difference from the previous examples is that the employee is paid every two weeks rather than every month). In this case, calculations will be based on 26 pay periods. Thus the 200 euro amount would be grossed up to an annual equivalent of 5200 euro (200×26). After deducting 5% employee pension contributions, the annual taxable wage is 4940 euro. In this case, paragraph 1.3 of Article 6 then applies and this provides that annual tax payable would be 81 euro 60 cents plus 8 percent of the amount over 3,000 euro ($4,940 - 3,000 \times 8\% = 155$ euro 20 cents) giving a total of 236 euro 80 cents. Dividing by the number of pay periods (26) results in 9 euro 10 cents being required to be withheld from the 200 euro gross amount payable. Together with the pension contributions of 10 euro (5% of 200 euro), the employee will receive a net wage of 180 euro 90 cents (200 euro less 10 euro pension contributions withheld and less 9 euro 10 cents withholding tax on wages).

Example 4:

A university student completes their studies at the end of the academic year and commences employment from the beginning of October on a wage of 400 euro a month. Using the withholding tax rate method outlined in this paragraph, the employer would gross up monthly pay to a gross of 4800 euro, deduct 5% employee pension contributions to arrive at an annual taxable wage of 4560 euro, and calculate monthly withholding tax of 10 euro 40 cents $(4,560 - 3,000 \times 8\%) / 12$. For the last 3 months of the year the employee would receive 1,200 euro and have total tax withheld of 31 euro 20 cents. However, their annual tax liability (assuming no other taxable income) on 1200 euro income is only 9 euro 60 cents $(1,200 - 960 \times 4\%)$ so the person would now be able to claim a tax refund of 21 euro 60 cents. Alternatively, the person could (from 1 January 2011) have applied for a special tax rate which TAK

would have calculated in this case at 0.8% which would mean tax withheld each month would have been only 3 euro 20 cents (400 x 0.8%) with the result that tax withheld during the three months of employment would be 9 euro 60 cents matching the annual liability.

2. Paragraphs 1 and 4 of Article 38 of The Law require payments of wages and pensions to be subject to withholding tax. Taxable wages or pensions paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement / convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the wages or pension to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

3. The written evidence required under paragraph 2 of this section shall be:

3.1. in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;

3.2. in any other case, other than in the case of wages and pensions that are exempt from personal income tax under paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 or 1.14 of Article 8 of The Law (where no written evidence is necessary), a copy of a letter from TAK confirming exemption from personal income tax.

4. For the purpose of remitting tax withheld on taxable wages and pensions under this section, withholders shall complete tax withholding and remittance statement forms as prescribed by TAK and shall submit the forms and payments to a bank or financial institution licensed by the Central Bank of Kosovo.

5. Employers who pay wages more frequently than once per month are required to withhold tax from those wages each pay period but are only required to complete one tax withholding and remittance statement form and to pay tax withheld once in respect of each month. Employers who want to remit the tax more frequently than once per month may do so by filling out additional tax withholding and remittance statements but must indicate whether second and subsequent forms in respect of the same month are a correction or an additional remittance for that month.

Section 9

Withholding Tax on Interest and Royalties

1. Paragraph 1 of Article 39 of The Law requires that tax be withheld from payments of interest or royalties. Interest or royalties paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement / convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the interest and royalties to provide

written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

- 2.1. in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;
- 2.2. in any other case, a copy of a letter from TAK confirming exemption from personal income tax.

Section 10

Withholding Tax on Lottery and Game of Chance Winnings

[Note: This Section of the Administrative Instruction, as far as it relates to games of chance, will become obsolete when a new Law on Games of Chance and Lottery comes into force, pursuant to paragraph 2 of Article 49 of The Law.]

1. Paragraphs 1 and 2 of Article 40 of The Law require that payments of lottery and game of chance winnings are subject to withholding tax. Lottery, or game of chance, winnings paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement or convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the winnings to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

- 2.1 in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;
- 2.2 in any other case, a copy of a letter from TAK confirming exemption from personal income tax;
- 2.3 exemption from personal income tax provided in respect of games of chance winnings under paragraph 1.13 of Article 8 of The Law, only comes into effect at the same time that withholding no longer applies to games of chance winnings - this will be when a new Law on Games of Chance and Lottery comes into force, pursuant to paragraph 2 of Article 49 of The Law.

3. For the purpose of remitting tax withheld on lottery, or game of chance, winnings under this section, withholders shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 11

Withholding Tax on Certain Non-Residents

1. Paragraphs 1 and 2 of Article 41 of The Law require the withholding of tax from income attributable to non-resident entertainers and to non-residents who perform services in Kosovo. Where such income is paid or credited to a non-resident person who or entity which is exempt from personal income tax under Article 8 of the Law, under any other law of Kosovo or under an international agreement or convention, such income shall not be subject to withholding tax. In such cases, the onus is on the recipient of the income to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold tax.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;

2.2 in any other case, a copy of a letter from TAK confirming exemption from personal income tax.

3. Income attributable to non-residents which is subject to withholding tax under Article 38 of The Law shall not also be subject to withholding under Article 41 of The Law. In such cases only withholding under Article 38 shall apply.

4. Income attributable to a non-resident entertainer under paragraph 1 of Article 41 of The Law which is paid or credited in any case other than that covered by paragraphs 1 or 3 of this section, shall be subject to withholding unless the gross compensation from his or her personal activities from all payers for such activities will not exceed one thousand (1,000) euro in a tax period. In situations where the payer is not sure whether the gross compensation of the entertainer from his or her personal activities in the tax period will exceed 1,000 euro, the payer is obliged to ask the entertainer about his or her expected gross compensation and only if the entertainer indicates that their gross compensation from personal activities in the taxable period will be 1,000 euro or less should payments or crediting not be subject to withholding.

5. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 41 of The Law relates to personal activities of the entertainer that are exercised in Kosovo. Payments to non-resident entertainers that are not in relation to their personal activities (e.g. from sales of merchandise) are not subject to withholding. Payments from Kosovo for personal activities exercised outside Kosovo are also not subject to withholding.

Example:

A non-resident entertainer visits Kosovo and earns money from performances in Prishtina and Prizren. The entertainer also earns money from sales of CDs of their music and other merchandise. Withholding only applies in respect of money paid to

the entertainer for the performances. The money from the sale of merchandise is not in relation to personal activity of the entertainer.

6. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 41 of The Law relates to income attributable (whether paid in cash or kind, the latter of which would be valued at open market value) to the entertainer whether paid directly or indirectly. Withholding is also required where the entertainer is paid indirectly, for example where payment is made to a corporation or other legal person which is held 100% by the entertainer or which is otherwise beneficially owned by the entertainer rather than directly to the entertainer.

7. The requirement to withhold tax from income paid to non-residents under paragraph 2 of Article 41 of The Law relates to payments for services performed in Kosovo. No withholding is required from payments made to non-residents for goods or from payments made to non-residents for services performed outside Kosovo (e.g. international transport services, computer system support provided remotely from another country). An apportionment will be needed where services are performed both inside and outside Kosovo except in cases where the services performed in one country are merely incidental to the services performed in the other country.

Example:

A Kosovo business enters into a contract for a non-resident supplier to design computer software for the Kosovo business use. All the design work and testing is performed outside Kosovo, However a representative of the supplier is required to visit Kosovo to ensure that the software is properly installed. In such circumstances, the installation visit would be regarded as merely incidental to the main software design work, and as that was performed outside Kosovo, no withholding tax would apply in respect of payments to the non-resident supplier. In contrast, if the supplier subsequently entered into a maintenance contract for the software which envisaged some system testing from outside Kosovo but also some site visits to Kosovo then withholding tax would apply in respect of the maintenance contract costs in respect of that portion of the cost that related to site visit work performed in Kosovo.

8. The requirement to withhold tax from income under paragraphs 1 and 2 of Article 41 of The Law applies only to those who are regarded as non-residents for personal income tax purposes. For natural person entertainers who have their principal residence in Kosovo or who are physically in Kosovo for more than 183 days in any 12-month period, withholding should not apply as the entertainers will be regarded as residents and subject to income tax on their worldwide income. The requirement to withhold tax from income paid to non-residents under paragraph 2 of Article 41 also applies to non-resident natural persons who carry out a business but who have no permanent establishment in Kosovo.

8.1 Paragraph 4 of Article 31 of The Law provides that in both cases *“withholding under this article shall be considered to be a final tax and the recipients of such income subject to the withholding shall not submit a declaration to the tax administration, notwithstanding the provisions of Article 34 of this Law”*. The 5% withholding tax will be their final personal income tax liability in Kosovo and they are not allowed to submit an annual personal income tax declaration to claim back the tax withheld on the basis that they are not liable for personal income tax in Kosovo because they have no permanent establishment there.

9. For the purpose of remitting tax withheld on income of the types referred to in paragraphs 1 and 2 of article 41 of the Law, payers shall complete a tax withholding and remittance statement from as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

10. For the purposes of this section, the term “payer” shall mean any person or entity, whether an organization or individual, which has agreed to pay a non-resident person or entity for entertainment or other services performed in Kosovo.

Section 12

General Provisions Applying to Withholding Taxes

1. Chapter IX of The Law provides that withholding taxes shall be remitted to a bank or financial institution licensed by the Central Bank of Kosovo. A bank transfer may be made in lieu of a cash remittance. Such remittances (including money transfer orders for bank transfers) may be submitted to any branch of an authorized bank or financial institution that accepts them. Except in cases where specific tax officials have been designated to collect tax by the TAK Director General under the Law on Tax Administration and Procedures, such remittances shall not be submitted to any office or officer of TAK.

2. The remittances referred to in paragraph 1 of this section shall be accompanied by a statement of tax withholding. The statement of tax withholding shall be:

2.1 for those withholders who wish to and are able to file their tax withholding information to TAK electronically, a tax withholding payment voucher.

2.2 for other withholders, a completed tax withholding and remittance statement form as prescribed by TAK.

3. Chapter IX of The Law provides that annual reconciliation statements, together with copies of tax withholding certificates, are required to be provided to the Tax Administration. Such statements and certificates can be provided to any office of the Tax Administration of Kosovo or to any branch of an authorized bank or financial institution that accepts them.

4. Chapter IX of The Law provides specific dates by which withholding taxes are to be paid, certificates of withholding taxes are to be provided to recipients, and withholders are required to provide annual reconciliation statements to the Tax

Administration. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late filing or payment will not apply where filing and/or payment occurs on or before that next working day.

5. Chapter IX of The Law provides various filing and payment requirements for withholders and payers. Where these requirements are not met, TAK will apply interest and administrative penalties under the Law on Tax Administration and Procedures in respect of, as applicable:

- 5.1. failure to withhold, collect or pay over a withholding tax;
- 5.2. failure to provide the recipient of income subject to withholding tax with a tax withholding certificate;
- 5.3. failure to file an annual reconciliation statement with TAK by its due date;
- 5.4. filing an inaccurate or incomplete annual reconciliation statement with TAK.

Section 13 **Economic Activity Quarterly Advance Payments**

1. In accordance with paragraph 2.1 of Article 43 of The Law, taxpayers with annual gross income of 50,000 euro or less and those who do not opt to prepare financial statements are required to make quarterly advance payments of personal income tax. Such taxpayers shall submit quarterly advance payment for small individual business forms in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates.

2. In accordance with paragraph 2.2 of Article 43 of The Law, taxpayers with annual gross income in excess of 50,000 euro and those who opt to prepare financial statements are required to make quarterly advance payments of personal income tax. Such taxpayers, and insurance companies, shall submit quarterly advance payment for large individual business forms in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates.

3. Taxpayers covered by paragraph 2.2 of Article 43 of The Law are required to use the estimate basis in their first year of making quarterly advance payments and the estimates are based on $\frac{1}{4}$ of estimated annual tax liability for the first year. For those who commence economic activity during the first quarter this is not an issue, but for those who commence later in the year, they are only required to pay $\frac{3}{4}$, $\frac{1}{2}$ or only $\frac{1}{4}$ of their first year liability in installments during the first year. For their second year, by making quarterly advance payments on the basis of annual tax liability in respect of

their economic activity for their first year, increased by 10%, no interest penalty is payable. Taxpayers whose advance payments are insufficient compared with final tax liability will be only penalized in respect of the last quarter of their first year but based on cumulative installment amounts compared with annual liability, rather than simply considering the last installment in isolation. In such cases, interest penalty will only apply where quarterly advance payments made have been less than 90% of the annual tax liability in respect of their economic activity for their first year. For the second and other subsequent years as the option of paying with no interest penalty is available they will be penalized per each quarterly installment if insufficient payments are made during the year.

Example 1:

An individual taxpayer has started an economic activity in 2010. He has paid in 3 installments (quarters 2, 3 and 4) respectively 100 euro, 200 euro and 620 euro. Annual personal income tax liability for 2010 in respect of that economic activity turns out to be 1,000 euro. In this case, as total installments (920 euro) were more than 90% of annual liability (90% of 1,000 = 900 euro) no interest penalty applies (as per paragraph 3.3 of Article 43 of The Law).

Example 2:

An individual taxpayer has started an economic activity in 2010. He has paid in 2 installments (quarters 3 and 4) respectively 200 euro and 500 euro. Annual personal income tax liability for 2010 in respect of that economic activity turns out to be 1,000 euro. In this case, as total installments (700 euro) were less than 90% of annual liability (90% of 1,000 = 900 euro) interest is payable starting from 15 January 2011 (the due date of the last quarterly installment in respect of the 2010 tax year). Such interest is based on 300 euro, the difference between annual liability (1,000 euro) and cumulative total installments paid (700 euro) and is computed from 15 January 2011 until the due date for submitting the final declaration (31 March 2011). At that point the interest penalty for underpaying an advance payment ends but regular penalties would then apply in respect of any period between that due date until the tax is paid.

4. In cases where early installments were too low and later installments were too high, interest penalties shall apply for earlier installments until later excess payments cover the earlier shortfalls. In cases where early installments were too high and later installments were too low, TAK shall recognize excesses in earlier periods covering shortfalls in later periods and interest penalties might or might not apply depending on the amounts of excesses and shortfalls.

Example:

In 2010 a taxpayer's business made a profit and 1,000 euro personal income tax was payable in respect of that business. For 2011, another profit was made and 2,000 euro

personal income tax was payable (in 2012). During 2011 quarterly installments were made of 600 euro, 100 euro, no installment, and 350 euro respectively. Given the 2010 annual liability of 1,000 euro and adding 10%, quarterly installments during 2011 should have been at least 275 euro each. No interest penalty was payable in respect of the first installment (as the 600 euro payment exceeded the 275 euro payable). No interest penalty was payable in respect of the second installment (as the 100 euro payment plus the 325 (600 less 275) euro excess from the first installment exceeded the 275 euro payable). Interest payable on the third installment would be based on 125 euro (being 275 euro payable less the remaining 150 (two payments totaling 700 euro less liability for those two installments of 550 euro) euro excess from the previous quarters) No interest was payable on the fourth installment and the excess of 75 euro (350 paid compared with 275 payable) can be applied to reduce the interest payable on the third installment but only with effect from the date of the payment of the fourth installment.

5. Sub-paragraph 2.2.2 of Article 43 of The Law refers to payments based on past year tax liability. Where a taxpayer has a tax loss for a particular year, then rather than using the past year tax liability basis and applying a 110% calculation, the taxpayer is required to calculate and pay installments based on estimated taxable income for the current year. If the taxpayer estimates that they will also make a loss in the current year, or that any profit will be exceeded by losses carried forward, no installments would be necessary but interest penalty could apply if the taxpayer's estimate turned out to be incorrect.

Example:

In 2010 a taxpayer's business had a loss. In 2011, the taxpayer estimates that the business will make a profit (after allowing for losses carried forward) and annual tax liability will be 1,000 euro. Installments are required to be paid during 2011 based on $\frac{1}{4}$ of the estimated annual tax liability.

6. In cases where there has been a tax audit or other occurrence in a subsequent year that determines a different annual tax liability in respect of an earlier tax year, if the annual tax liability is found to be higher, penalties would apply for under-declaration, for late payment and also interest in respect of the underpaid annual liability. Such penalties and interest for subsequently discovered additional tax liability shall be applied to the annual tax liability only, and no adjustment will be made to past quarterly installment amounts where the result of the tax audit or other occurrence was to increase the tax liability by up to 20%. In cases where there has been an increase in tax liability of more than 20%, then interest penalty will apply to the extent that quarterly installments were below $\frac{1}{4}$ of 110% of the adjusted income tax liability as a result of the tax audit or other occurrence.

7. The annual Personal Income Tax form is a tax declaration but the quarterly advance payment statements are not considered to be tax declarations. In accordance with paragraph 3 of Article 43 of The Law, late filing and late payment penalties shall not

apply to late filed quarterly installment forms, but interest shall apply except where the provisions of sub-paragraphs 3.1, 3.2 or 3.3 of that Article apply.

Section 14 **Rental Income Quarterly Advance Payments**

Paragraphs 1 and 2 of Article 44 of The Law require taxpayers to make quarterly payments of personal income tax in respect of income from rent. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 15 **Intangible Property Income Quarterly Advance Payments**

Paragraphs 1 and 2 of Article 45 of The Law require taxpayers to make quarterly payments of personal income tax in respect of income from intangible property. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 16 **Gift Income Quarterly Advance Payments**

Paragraph 2 of Article 46 of The Law requires taxpayers who receive taxable gifts to make quarterly payments of income tax. In accordance with paragraph 2 of Article 14 of The Law, taxable gifts are monetary or non-monetary gifts (other than those gifts exempted from taxation under paragraphs 3 and 4 of Article 14 of The Law) received by residents which in any tax period have a combined value of greater than 5,000 euro. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 17 **General Provisions Applying to Quarterly Advance Payments**

1. Chapter XI of The Law provides that quarterly advance payments shall be remitted to a bank or financial institution licensed by the Central Bank of Kosovo. A bank transfer may be made in lieu of a cash remittance. Such remittances (including money

transfer orders for bank transfers) may be submitted to any branch of an authorized bank or financial institution that accepts them. Except in cases where specific tax officials have been designated to collect tax by the TAK Director General under the Law on Tax Administration and Procedures, such remittances shall not be submitted to any office or officer of TAK.

2. The remittances referred to in paragraph 1 of this section shall be accompanied by a quarterly advance payment statement. The quarterly advance payment statement shall be:

2.1. for those payers who wish to and are able to file their quarterly advance payment information to TAK electronically, a quarterly advance payment voucher.

2.2. for other payers, a completed quarterly advance payment statement form as prescribed by TAK.

3. Chapter XI of The Law provides specific dates by which quarterly advance payment forms are required to be furnished and by which quarterly advance payments are required to be paid. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late filing or payment will not apply where filing and/or payment occurs on or before that next working day.

Section 18 Entry into Force

This Administrative Instruction enters into force on the day of its signature by the Minister of Economy and Finances.

Bedri HAMZA



Deputy Minister of Economy and Finance

Date 30 / 07/ 2010
